

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

JEFF POTTEBAUM
Facility #67608

Sioux County, Iowa

ADMINISTRATIVE CONSENT ORDER
NO. 2015-AFO-02

TO: Jeff Pottebaum
17676 Shamrock Avenue
Remsen, Iowa 51050

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Jeff Pottebaum for the purpose of resolving violations resulting from a discharge from Mr. Pottebaum's animal feeding operation that resulted in water quality violations. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Don Cunningham, Field Office 3
Iowa Department of Natural Resources
Gateway North Mall-1900 North Grand
Spencer, Iowa 51301
Phone: 712/262-4177

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone: 515/725-9572

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative consent order is issued pursuant to the provisions of Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent violations of Iowa Code chapter 455B, Division III, Part 1; Iowa Code chapter 459A and the rules adopted or permits issued pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative

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Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. Jeff Pottebaum owns and operates a combined open lot and confinement operation with a capacity for housing 500 head of cattle in four open feedlots, 480 head of cattle in one confinement building, and 280 head of finish swine in two open feedlots. The facility is located at 5053 Kennedy Avenue; Alton, Iowa (SE ¼ of Section 35, Nassau Township, Sioux County). The facility was expanded to current numbers in 2013 with the construction of a new confinement cattle barn and permanent manure controls including a concrete wall, a picket fence solid settler and a settling basin with an Agri-Drain control structure.

2. On August 16, 2014, DNR Field Office 3 received a complaint claiming that runoff from Mr. Pottebaum's facility was flowing to a road ditch to a waterway located near the north side of the residence on the east side of Kennedy Avenue. The complainant was concerned that the waterway was connected to a creek or tile intake. On August 29, 2014, DNR Field Office 3 received a complaint claiming that cattle manure may be contaminating a small tributary north of the intersection of 510th Street and Kennedy Avenue.

3. On September 4, 2014, Don Cunningham, DNR Field Office 3 environmental specialist, conducted an investigation of the complaints. Mr. Cunningham started his investigation in the grassed waterway located north of the intersection of Kennedy Avenue and 510th Street, the area described in the complaints. Mr. Cunningham noted that the grassed waterway was heavily contaminated with settled effluent laden runoff. The liquid in the waterway was extremely dark and discolored and had a strong manure odor. The grassed waterway progressed from Kennedy Avenue to the northwest toward Mr. Pottebaum's facility.

4. Mr. Cunningham continued to Mr. Pottebaum's facility. There was no one on site. Mr. Cunningham walked around the south end of the feedlot and observed a flow path where contaminated runoff had left the feedlot and entered the cornfield that outlets to the grassed waterway. Mr. Cunningham followed the flow path of the runoff to the north and it stopped at the Agri-Drain structure that controls the level of manure in the settling basin on site. Mr. Cunningham then followed the flow path to the south and into a cornfield where a very distinct flow path continued through the corn rows.

5. Mr. Cunningham returned to a culvert at Kennedy Avenue downstream of Mr. Pottebaum's facility. He went to the adjacent farm owned by Tom Kellen. Mr. Kellen stated that the waterway had been in a contaminated condition for a couple weeks. Mr. Kellen showed Mr. Cunningham a large tile intake at the end of the

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waterway and Mr. Cunningham noted a pool of settled effluent laden runoff around the intake. Mr. Kellen stated the outlet from the intake is into Willow Creek approximately 600 feet south of the intake. Mr. Cunningham walked through the soybean field to the outfall of the tile intake. The discharge was extremely discolored and had a very strong manure odor.

6. Mr. Cunningham sampled the area approximately 100 feet upstream from where the tile discharged into Willow Creek. The water was very clear with no odor. The field test indicated an ammonia concentration of 0.2 mg/L. The laboratory sample indicated an ammonia concentration of 0.3 mg/L. Mr. Cunningham sampled the tile that outlets to Willow Creek. The sample was extremely discolored and extremely thick with a strong manure odor. Due to the dark color, Mr. Cunningham was unable to conduct a field test on the sample. The laboratory sample indicated an ammonia concentration of 2,800 mg/L. There was a definite visible plume in the clear water of Willow Creek where the tile was discharging.

7. Mr. Cunningham travelled approximately 100 feet downstream of the tile discharge. At this location Willow Creek was cloudy with a definite manure odor. A field test was not possible because of the darker cloudy color. The laboratory sample indicated an ammonia concentration of 460 mg/L. Mr. Cunningham continued downstream to the next bridge crossing at Quartz Avenue. The water was clear and the field test indicated an ammonia concentration of 0.5 mg/L.

8. Mr. Cunningham returned to Mr. Pottebaum's facility and collected a sample of the liquid in the flow path than ran through the cornfield. The sample was extremely dark colored and thick with a strong manure odor. Due to the dark color, Mr. Cunningham was unable to conduct a field test on the sample. The laboratory sample indicated an ammonia concentration of 2,800 mg/L.

9. Mr. Cunningham left a business card at the farm house at Mr. Pottebaum's facility. Mr. Pottebaum contacted Mr. Cunningham on the telephone. He stated that the manure control system was installed in 2013 and he had been releasing small volumes of settled runoff as needed to keep up with the frequent rains. Mr. Pottebaum released settled effluent from the settling basin through the Agri-Drain control structure. Mr. Cunningham told Mr. Pottebaum that he was able to follow a path of runoff from the facility to a tile intake that outlets into Willow Creek. Mr. Pottebaum did not know about the tile intake. Mr. Cunningham told Mr. Pottebaum to take whatever measures possible to eliminate the discharge and clean out the grassed waterway of any remaining contaminated runoff.

10. On September 6, 2014, Mr. Pottebaum left a message for Mr. Cunningham stating he had cleaned out the portion of the waterway on his property and had placed a tarp over the intake to prevent any further runoff from reaching the

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creek. Mr. Pottebaum stated that Mr. Kellen denied him access to the waterway on the Kellen property.

11. On October 1, 2014, Mr. Cunningham conducted a full site inspection of Mr. Pottebaum's facility. Mr. Cunningham asked to see the improvements that were made as a result of the spill incident. Mr. Pottebaum showed Mr. Cunningham the grassed waterway that had been cleaned out, re-graded and seeded. The seeding was already established. Mr. Pottebaum also added another containment berm as well as a terrace in the field south of the site to further contain excess runoff. The control structure system is new and Mr. Pottebaum admitted that he was still in the process of learning how to best manage his facility. Based on Mr. Cunningham's observations during this visit and Mr. Pottebaum's most recent actions, it was determined that Mr. Pottebaum had taken significant actions to permanently eliminate the conditions that caused the previous discharge. DNR categorized this facility at this time of this inspection as a medium animal feeding operation.

12. On October 29, 2014, DNR issued a Notice of Violation and Notice of Referral letter to Mr. Pottebaum for the violations resulting from the spill incident. The letter informed Mr. Pottebaum that the matter was being referred for further enforcement.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 459A.104 provides that the Environmental Protection Commission (Commission) shall adopt rules related to the construction or operation of animal feeding operations, including permit and minimum manure control requirements. The Commission has adopted such rules at 567 IAC chapter 65.

2. Iowa Code section 455B.186 prohibits the discharge of pollutants into water of the state, except for adequately treated pollutants discharged pursuant to a permit from the DNR. Mr. Pottebaum intentionally released settled effluent from the settling basin through the Agri-Drain control structure during August and September of 2014. A portion of the effluent reached a grassed waterway south of the facility and flowed to a tile intake that discharged to Willow Creek. The laboratory samples collected by the field office confirmed elevated levels of pollutants. The above-mentioned facts indicate a violation of this provision.

3. 567 IAC 61.3(2) provides general water quality criteria and prohibits discharges that will produce objectionable color, odor or other aesthetically objectionable conditions; settle to form sludge deposits; interfere with livestock watering; or are toxic to animal or plant life. The laboratory results indicated elevated pollutants. Additionally, DNR Field Office 3 personnel observed discolored

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water with an objectionable odor. The above mentioned facts indicate violations of the general water quality criteria.

V. ORDER

THEREFORE, the DNR orders and Jeff Pottebaum agrees to do the following:

1. Mr. Pottebaum shall operate and maintain all animal feeding operation structures that he owns or operates in compliance with all applicable DNR rules and regulations;
2. Mr. Pottebaum shall operate his facility in such a manner to ensure that the new controls prevent effluent from reaching and contaminating a water of the state; and
3. Mr. Pottebaum shall pay an administrative penalty in the amount of \$4,000.00 within 30 days of the date the Director signs this administrative consent order.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to this chapter, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty of \$4,000.00. The administrative penalty is determined as follows:

Economic Benefit – 567 IAC chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that “where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit.” 567 IAC 10.2(1) further states, “reasonable estimates of economic benefit should be made where clear data are not available.” Jeff Pottebaum gained an economic benefit by failing to properly monitor his manure control structure system. The system was being operated as designed with periodic releases of effluent; however, the frequent and significant rainfall events kept the infiltration area

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saturated enough that the effluent would no longer soak in. If Mr. Pottebaum had monitored the system more closely he would have realized the problem and would have needed to pump to a different area either through a hose or transporting the effluent farther away. These costs would have included hiring a commercial applicator or the costs associated with the operation of application equipment, including but not limited to fuel, employee costs, and general equipment usage. Based on the above facts, the economic benefit Mr. Pottebaum received was at least \$300.00 and that amount is assessed for this factor.

Gravity – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. DNR Field Office 3 documented a discharge that led to documented water quality violations. These violations threaten the integrity of the regulatory programs because compliance with animal feeding operation requirements is required of all persons in this state. Based on the above facts, \$2,200.00 is assessed for this factor.

Culpability – Jeff Pottebaum has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that his conduct is subject to DNR's rules. Mr. Pottebaum is obligated to operate the facility in accordance with the state regulations. Therefore, \$1,500.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Jeff Pottebaum. For that reason Jeff Pottebaum waives the right to appeal this administrative consent order or any part thereof.

VIII. NONCOMPLIANCE

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.

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Chuck Gipp
CHUCK GIPP, DIRECTOR
Iowa Department of Natural Resources

Dated this 7th day of 5
January, 2014.

Jeff Pottebaum
JEFF POTTEBAUM

Dated this 23 day of
Dec, 2014.

Facility #67608; Kelli Book; DNR Field Office 3; EPA; I.C.1, VIII.D.1.b and
VIII.D.3.a

RECEIVED

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IDNR AIR QUALITY